

SEITZ, VAN OGTROP & GREEN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

222 DELAWARE AVENUE, SUITE 1500
POST OFFICE BOX 68
WILMINGTON, DELAWARE 19899

BERNARD A. VAN OGTROP
GEORGE H. SEITZ, III
JAMES S. GREEN
R. KARL HILL
PATRICIA P. MCGONIGLE
KEVIN A. GUERKE

(302) 888-0600
FAX: (302) 888-0606

Writer's Direct Dial: (302) 888-7603
Writer's E-Mail Address: jgreen@svglaw.com
www.lawyers.com/svglaw

December 12, 2006

VIA CM/ECF

The Honorable Kent A. Jordan
U.S. District Court
844 North King Street
Wilmington, DE 19801

RE: *David N. Terhune v.*
Applied Extrusion Technologies, Inc.,
Jackson Craig and Terry Smith
C.A. No. 06-360(KAJ)

Dear Judge Jordan:

In accordance with the Court's Scheduling Order of August 21, 2006 (Docket #12), the following is a Joint Report of the Status of the above captioned matter:

The present suit was instituted by Plaintiff, David Terhune on May 30, 2006 (Docket # 1), requesting declaratory, injunctive and monetary relief alleging against his former employer and two individuals associated with that corporate entity: violations of the Employment Retirement Security Act of 1974 ("ERISA"), 29 U.S.C. §1132(a)(1)(B)[Count I]; breach of his employment contract [Count II]; breach of the implied covenant of good faith and fair dealing [Count III]; the Delaware Wage Payment and Collection Law ("WPCL"), 19 Del.C. §1101 [Count IV]; and fraud in the inducement [Count V]; and defamation [Count VI]. Plaintiff is represented James Green, Esquire, Seitz, Van Ogtrop & Green, P.A. (Lead Attorney) and Alan B. Epstein, Esquire, Spector, Gadon & Rosen, P.C. (*Pro Hac Vice*).

On July 5, 2006, the Defendants collectively filed a Motion to Dismiss Plaintiff's Complaint and Opening Brief (Docket #s 11 and 12) pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) for failure to state a claim [Count I], for failure to state a claim or in the alternative for lack of subject matter jurisdiction [Counts II, III

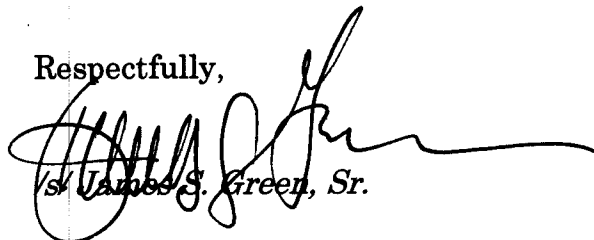
The Honorable Kent A. Jordan
December 12, 2006
Page 2 of 2

and IV] and for lack of subject matter jurisdiction [Counts V and VI]. An Answering Brief was filed by the Plaintiff on August 3, 2006 (Docket # 17) and a Reply Brief (Docket # 19) was filed on August 10, 2006. Oral Argument has been requested in accordance with the Local Rules by both Plaintiff and Defendants.

On August 16, 2006, Plaintiff also filed a Motion for the Payment of Legal Fees and Costs of Litigation (Docket # 24) during the pendency of the matter alleging that such indemnification is in accordance with the terms of Plaintiff's contract of employment. The Defendant employer has filed its Opposition to that Motion on August 30, 2006 (Docket 28) averring that Plaintiff is not presently eligible for that reimbursement.

Both Plaintiff and Defendant have exchanged Initial Disclosures in accordance with Fed. R. Civ. P. 26(a)(1) Docket #s 29 and 30 respectively). Defendants served Document Requests and Interrogatories on Plaintiff on September 20, 2006, to which Plaintiff has not yet responded. The parties have also discussed and agreed that early mediation before a neutral selected by the parties may be helpful and they have begun initiating that process. Additionally, a mediation conference has been set for May 23, 2007 before the Honorable Mary Pat Thyne.

Respectfully,



James S. Green, Sr. (DE0481)
jgreen@svglaw.com

JSG/sp

cc: Clerk of the Court (via CM/ECF)
Alan Epstein, Esq. (via CM/ECF)
David E. Moore, Esq. (via CM/ECF)
Wendy K. Voss, Esq. (via CM/ECF)
Christopher J. Powell, Jr., Esq. (via CM/ECF)
Anthony D. Rizzotti, Esq. (via CM/ECF)